

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
MARINE POWER AND EQUIPMENT
COMPANY, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCRB No. 81-192

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of an alleged violation of respondent's Section 9.03(b) of Regulation I, came on for hearing before the Pollution Control Hearings Board, Gayle Rothrock and David Akana, Members, convened in Lacey, Washington on January 19, 1982. William A. Harrison, Administrative Law Judge, presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by its attorney George S. Martin. Respondent appeared by its attorney Keith D. McGoffin. Reporter Lois Fairfield recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were examined. From
2 testimony heard and exhibits examined, the Pollution Control Hearings
3 Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
7 a certified copy of its Regulation I containing respondent's
8 regulations and amendments thereto, of which official notice is taken.

9 II

10 On October 29, 1981, respondent Puget Sound Air Pollution Control
11 Agency's (PSAPCA) inspector observed emissions emanating from the
12 stack of the M/V Kittitas. These aggregated at least 7-3/4 minutes in
13 one hour, were of an opacity ranging from 25-100%, and were black in
14 color.

15 III

16 The M/V Kittitas--a ferry boat--is being constructed under a
17 contract awarded by the state to appellant, Marine Power. The vessel
18 had been tested by the state but was returned to the Marine Power
19 shipyard for adjustments. It was berthed there with Marine Power's
20 consent and the emission would have been as apparent to Marine Power
21 as it was to WSDOT personnel and to respondent's inspector.

22 IV

23 Adjustments to the computer guidance system were made by
24 Propulsion Systems, Inc., a subcontractor of Marine Power. An
25 employee of Propulsion Systems, Inc., directed the testing which

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 called for varying engine speeds and thus produced the emissions.
2 Officials of the state (WSDOT) operated the engine in compliance with
3 directions from Propulsions Systems, Inc.

4 V

5 Respondent, PSAPCA, assessed a \$250 civil penalty jointly against
6 the state (WSDOT) and Marine Power for violation of Section 9.03(b) of
7 its regulations relating to opacity. The state did not appeal and
8 paid the \$250 civil penalty. Appellant, Marine Power, appeals the
9 violation which PSAPCA alleges and contests only the issue of its
10 responsibility, not the fact of a violative emission, which it admits.

11 VI

12 Any Conclusion of Law which should be deemed a Finding of Fact is
13 hereby adopted as such.

14 From these Findings the Board enters these

15 CONCLUSIONS OF LAW

16 I

17 The rule which PSAPCA correctly alleges to be violated, Section
18 9.03(b) of Regulation I states:

19 It shall be unlawful for any person to cause or
20 allow...[an emission such as here].

21 II

22 The M/V Kittitas was berthed at appellant's shipyard with
23 appellant's consent. Work was being performed by a subcontractor
24 pursuant to appellant's contract. The emission was open and obvious
25 and should have been known to appellant. Appellant offered no

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 evidence that it attempted to control the emission or withdraw its
2 consent for moorage. We conclude that appellant allowed the emission
3 in question. This is so regardless of the technical ownership or
4 delegation of authority to a sub-contractor for work on the vessel at
5 the time in question. This is so regardless of scienter which is not
6 an element of the regulation cited. See also Section 2, chapter 175,
7 Laws of 1980, RCW 70.94.040.

8 III

9 Marine Power violated Section 9.03(b) of Regulation I [as did the
10 state (WSDOT)].

11 IV

12 Any Finding of Fact which should be deemed a Conclusion of Law is
13 hereby adopted as such.

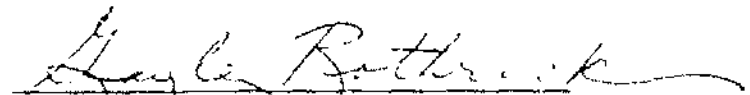
14 From these Conclusions the Board enters this
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ORDER

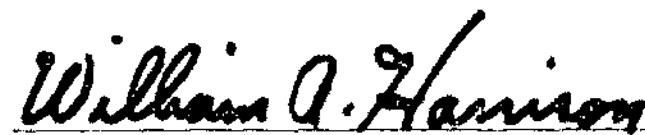
Marine Power and Equipment Company, Inc.'s violation of Section 9.03(b) is affirmed.

DONE at Lacey, Washington this 23rd day of March, 1982.

POLLUTION CONTROL HEARINGS BOARD


GAYLE ROTHROCK, Vice Chairman


DAVID AKANA, Member


WILLIAM A. HARRISON
Administrative Law Judge

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER